REMARKS

Claims 1-24 were originally filed in the present application.

Claims 1, 3-9, 11-17 and 19-24 are pending in the present application.

Claims 1, 3-9, 11-17 and 19-24 were rejected in the November 23, 2007 Office Action.

No claims have been allowed.

Claim 17 is amended herein.

Claims 1, 3-9, 11-17 and 19-24 remain in the present application.

Reconsideration of the claims is respectfully requested.

Applicant notes that the amendment to Claim 17 included herein is to correct a typographical error and thus does not add new matter. Accordingly, Applicant respectfully requests that this amendment be entered.

The Examiner rejected Claims 1, 3-4, 6-9, 11-12, 14-17, 19-20 and 22-24 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,078,963 to *Civanlar, et al.* ("*Civanlar*") in view of U. S. Patent Application Publication No. 2004/0156371 to *Kumar, et al.* ("*Kumar*"). The Examiner also rejected Claims 5, 13 and 21 under 35 U.S.C. §103(a) as being unpatentable over *Civanlar* in view of *Kumar*, as applied to Claims 1, 9 and 17 above, and further in view of U.S. Patent Application Publication No. 2005/0053080 to *Wybenga, et al.* ("*Wybenga*"). Of these, Claims 1, 9 and 17 are independent. These rejections are respectfully traversed for the reasons discussed below.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).) The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984).) Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of non-obviousness. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).) If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must not be based on the Applicant's disclosure. (*MPEP § 2142*).

In order to establish obviousness by combining references there must be some teaching or suggestion in the prior art to combine the references. (*Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 U.S.P.Q.2d 1294, 1297 (Fed. Cir. 1997) ("It is insufficient to establish obviousness that the separate elements of an invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the references."); *In re Rouffet*, 149 F.3d 1350, 1355-56, 47 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1998) ("When a rejection depends on a combination of prior art references, there must be some teaching, or motivation to combine the references.").)

Evidence of a motivation to combine prior art references must be clear and particular if the trap of "hindsight" is to be avoided. (*In re Dembiczak*, 175 F.3d 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) (Evidence of a suggestion, teaching or motivation to combine prior art references must be "clear and particular." "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'"); *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998) ("[R]ejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be 'an illogical and inappropriate process by which to determine patentability.'").)

The Applicant respectfully submits that neither *Civanlar* nor *Kumar*, either alone or in combination, discloses, teaches or suggests "a first one of said Layer 2 modules comprises a Layer 3 routing engine for forwarding a first received data packet through said switch fabric directly to a

second one of said Layer 2 modules using a Layer 3 address associated with said first received data packet if said first Layer 2 module does not recognize a Layer 2 address associated with said first received data packet and wherein said Layer 3 routing engine comprises a forwarding table comprising a plurality of aggregated Layer 3 addresses," as recited by independent Claim 1.

To show the claimed first Layer 2 module and its corresponding Layer 3 routing engine, the Examiner apparently cites one of *Civanlar*'s router ports and its corresponding routing engine. Office Action, page 3. (For the claimed Layer 2 modules coupled by the switch fabric, the Examiner specifically cites *Civanlar*'s switch fabric as shown in Figure 1. As the referenced figure shows only router ports coupled to the switch fabric, Applicant assumes that the Examiner is citing these router ports to show the claimed Layer 2 modules.)

Each of *Civanlar*'s router ports is capable of generating and maintaining its own routing tables. Col. 3, lines 30-32 and col. 4, lines 12-13. Thus, each router port may perform "some or all of the functions of the centralized routing and forwarding engines of a conventional router." Col. 4, lines 10-11. This is done in order to provide a router that "is significantly more scalable than a conventional router since there is no central processor controlling the routing functions." Col. 4, lines 17-19. As a result, each router port is capable of independently routing each received data packet using Layer 1 and/or Layer 2 processing. For example, as described with respect to Figure 4, "the search for a routing table entry may be distributed amoung" components within the router port. Col. 8, lines 4-8 (emphasis added). Continuing with the search description,

> Where the entry exists in the first level cache 209, the data packet may be routed directly from the external interface 201 to the internal interface 202...Where the

> entry does not exist in the first level cache, the data packet addressing information may be forwarded to the routing table look-up engine 210...for searching of the second level cache 203 and/or the routing table data storage 222.

Col. 8, lines 8-15. Thus, whether the router port finds the entry in the first level cache, the second level cache or the routing table data storage, the entry is found somewhere in the router port (which includes both of the caches and the data storage). See, e.g., Figure 2. Then, "[u]pon finding a matching address, the routing data may be forwarded..." Col. 8, lines 23-28. Conspicuously absent in *Civanlar* is any mention of the possibility of not finding a matching address within the router port. This is apparently by design because, as described above, each of *Civanlar*'s router ports is capable of generating and maintaining its own routing tables in order to remove the need for a central processor controlling the routing functions. Col. 3, lines 30-32 and col. 4, lines 12-13 and 17-19.

In addition, *Civanlar* teaches that the router port may "perform Layer, 1 and/or 2 processing and send the data packet on to the next network node...It is notable that no Layer 3 processing is necessary at the outgoing intelligent router port 103 and hence processing is very efficient." Col. 8, lines 44-49 (emphasis added). Thus, *Civanlar* teaches that the router port is capable of finding a matching address using only Layer 1 and/or Layer 2 processing and specifically teaches against using any Layer 3 processing.

In contrast, the claimed Layer 2 module may possibly "not recognize a Layer 2 address associated with said first received data packet." This is because the Layer 2 module may make use of route processing modules that are capable of accessing extensive routing tables that need not be stored locally at the Layer 2 modules, as are the routing tables of *Civanlar*. Present Application,

para. 31. Because of this possibility of not recognizing a Layer 2 address, the claimed Layer 2 module "comprises a Layer 3 routing engine for forwarding a first received data packet through said switch fabric directly to a second one of said Layer 2 modules using a Layer 3 address associated with said first received data packet if said first Layer 2 module does not recognize a Layer 2 address associated with said first received data packet." Thus, the Layer 3 routing engine may be used for forwarding a packet when the Layer 2 module does not recognize a Layer 2 address, while *Civanlar* has no teaching regarding this circumstance because *Civanlar* teaches that the router port *will* find a matching address for all packets received at the router port.

In addition, the claimed Layer 3 engine forwards a packet "using a Layer 3 address" for the packet and includes "a forwarding table comprising a plurality of aggregated Layer 3 addresses." Because *Civanlar* specifically teaches against any Layer 3 processing, *Civanlar* necessarily fails to teach forwarding packets using Layer 3 addresses. For the same reason, *Civanlar* also necessarily fails to teach a forwarding table having Layer 3 addresses.

Furthermore, *Civanlar* cannot be modified to include these missing elements. First of all, *Civanlar* teaches that a match is found using Layer 1 and/or Layer 2 processing. Thus, adding a Layer 3 routing engine to forward a packet using Layer 3 addresses would add cost without providing any benefit because each packet is already capable of being routed using only Layer 1 and/or Layer 2 processing. Secondly, *Civanlar* teaches that not including Layer 3 processing allows the implemented processing to be very efficient. Thus, *Civanlar* teaches that adding Layer 3 processing would decrease efficiency. *Kumar* also fails to provide these missing elements, and the Examiner

has not cited *Kumar* to show these elements. Therefore, for at least these reasons, a *prima facie* case of obviousness against independent Claim 1 has not been presented with reference to the cited art, either alone or in combination. Therefore, the Applicant respectfully submits that this rejection should now be withdrawn.

Similar to independent Claim 1, independent Claim 9 recites "a first one of said Layer 2 modules comprises a Layer 3 routing engine for forwarding a first received data packet through said switch fabric directly to a second one of said Layer 2 modules using a Layer 3 address associated with said first received data packet if said first Layer 2 module does not recognize a Layer 2 address associated with said first received data packet and wherein said Layer 3 routing engine comprises a forwarding table comprising a plurality of aggregated Layer 3 addresses," and independent Claim 17 recites, "determining if the first Layer 2 module recognizes a Layer 2 address associated with the first received data packet; and if the first Layer 2 module does not recognize the Layer 2 address associated with the first received data packet, using a Layer 3 routing engine associated with the first Layer 2 module to forward the first received data packet through the switch fabric directly to a second one of the Layer 2 modules and wherein the Layer 3 routing engine uses a Layer 3 address associated with the first received data packet to forward the first received data packet." Accordingly, for the reasons discussed above in connection with Claim 1, independent Claims 9 and 17 are not made obvious by the cited art. Therefore, the Applicant respectfully submits that these rejections should now be withdrawn.

Dependent Claims 3-8, which depend from independent Claim 1, dependent Claims 11-16, which depend from independent Claim 9, and dependent Claims 19-24, which depend from independent Claim 17, are also not made obvious by the cited art because they include the limitations of their respective base claims and add additional elements that further distinguish the art. Therefore, the Applicant respectfully submits that these rejections should now be withdrawn.

The Applicant disagrees with the Examiner's rejections of Claims 1, 3-9, 11-17 and 19-24 based on misdescriptions and/or misapplications of *Civanlar*, *Kumar* and *Wybenga* to at least some of Claims 1, 3-9, 11-17 and 19-24. However, the Applicant's arguments regarding those other shortcomings of *Civanlar*, *Kumar* and *Wybenga* are moot in view of the Claim 1 arguments above. However, the Applicant reserves the right to dispute in future Office Action responses the appropriateness and the applications of *Civanlar*, *Kumar* and *Wybenga* to the claims of the present application, including the right to dispute assertions made by the Examiner in the November 23, 2007 Office Action.

SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***jmockler@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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